Public Access to Forest Planning Documents

Complaint Investigation 040531

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The Investigation

In March 2004, the Board received a complaint from an individual about the adequacy of the public review process for proposed forest development plan amendments. The complainant is an environmental advocate for the Boundary area.

In September 2003, the complainant asked Ministry of Forests (MOF) in both the Arrow Boundary and Okanagan Shuswap Forest Districts to ensure that the nine licensees operating in an area important for a particular grizzly bear population (interest area) send him referrals of proposed forest development plan (FDP) amendments. The districts recognize that he has an interest in the area, which is between, and includes, Granby and Gladstone parks in the West Kootenay region of British Columbia. Both districts requested that licensees operating in the interest area advise the complainant when plans would be available for public review. The normal procedure in these situations is that the complainant would have to travel to view the plans, or pay for copies of proposed plans and associated data.

Some licensees' offices are up to four hours of car travel away, but the complainant does not own a car, nor does he have the financial resources to undertake such travel. Due to a previous back injury, the complainant finds it difficult to sit for long periods of time. Therefore, rather than do a review at the licensees' offices, the complainant wanted to review the FDPs at his home. He wanted a complete set of maps, FDP documents, related assessments, and other information sent to him to facilitate that review. He also prefers to do homework, including field checks and GIS analysis, before commenting on FDPs. However, both district managers refused to instruct licensees to send him that information.

The complainant asserts that under these circumstances, the rejection of his request for this material denies his access to information and hampers his ability to comment on proposed amendments. He maintains that the district managers should require the licensees to send him both electronic data and copies of proposed amendments, and to do so at no charge. For relief, the complainant would like government to establish an appropriate and measurable standard for what information should go to an interested member of the public in a referral.

The complainant also filed a freedom of information request with both districts. He was not satisfied with the response to that request and asked the Board to look into it as part of the complaint investigation.

The Board investigated: a) whether the district managers' decisions were appropriate, and b) if licensees had provided an adequate opportunity for the complainant to review the amendments.

Background

On September 2, 2003, the complainant asked the district managers of the two forest districts to have licensees refer FDP amendments in the interest area to him. The next day, the Okanagan Shuswap Forest District asked licensees to refer planned amendments to the complainant. The Arrow Boundary District responded within the week, saying that it could notify the licensees to do the same thing if the complainant wished. To the districts, "referring" the plan meant the licensee would send a letter to the complainant explaining that the plan was available for review at its office.

The complainant found a reference on MOF, Forest Practices Branch website[1] from a 1999 training session about revisions made to legislation to streamline the Forest Practices Code. In 1999, facilitators had delivered training throughout the province. If the facilitators could not answer specific questions, they promised to answer the questions on the MOF website. The following are relevant questions and answers from the website,:

1. Who can a district manager require an operational plan to be referred to?

   Any resource agency, other government agency, and any person that may be materially affected by the plan (OPR s. 7(1)).

2. When an operational plan is referred to someone, is the actual plan sent to them or do they need to go somewhere to view it?

   The plan is sent to any government agencies, including resource agencies, as well as any materially affected persons.

3. Can only portions of an operational plan be referred (OPR s. 7) rather than always the whole plan?

   The regulation only contemplates that the whole plan, or an amendment to the plan, be referred; however, it may be unnecessary to refer a whole plan if a party only requests a specific portion of it.

Since this information conflicted with the district managers' interpretations, the complainant asked both districts to clarify their local referral policies. The Arrow Boundary Forest District acknowledged the information on the MOF website, but said that the district manager had discretion to decide what information licensees should send out in a referral.

On September 25, the Arrow Boundary Forest District notified the complainant that it had advised the licensees who operate in the interest area to send the complainant a referral letter. Further, the district advised the complainant that it considered him to be a materially affected person, a status that allows the district manager to instruct licensees to refer FDP amendments to him.
The Okanagan Shuswap Forest District's 2002 FDP preparation guidance letter required the licensees to send a notice to such a party explaining where and when the party could review

an amendment. That policy also advised that, where appropriate, licensees should send a map and written description of the amendment to materially affected parties.

The Arrow Boundary Forest District policy letter dated February 2003 and complainant's status as a materially affected party required that licensees operating in that district send him a letter notifying him when and where an amendment was available for review. In the Arrow Boundary Forest District there was no advice provided to licences to send a map or written description of an amendment.

The complainant maintained that he should get full copies of FDPs. The Arrow Boundary Forest District responded in early October 2003. The district cited a Forest Practice Board report from 2001.[2] In that report, the Board's opinion is that a licensee need only make an amendment available to the public at its place of business, and that a licensee is not obligated to send a full plan to a member of the public. The October 2003 district response indicated that the district manager was of the opinion that a notice was sufficient with regard to the adequacy of the opportunity for review and comment for the complainant. With regard to proposed amendments, the complainant immediately received a referral from the Okanagan-Columbia Timber Sales Office of the British Columbia Timber Sales Program (BCTS). That referral contained a cover letter for the amendment with a map showing two cutblocks that were in the interest area. The complainant asked BCTS for more information and BCTS promptly sent all the information free of charge.

Within the month, the complainant also received a referral from a major licensee in the Arrow Boundary Forest District advising him that a FDP amendment was available for review at its office. The complainant asked the licensee if he could be sent a full copy of that amendment. The licensee agreed, but the amendment contained over 250 cutblocks on 40 maps so the licensee asked the complainant to pay reproduction costs of over $500. The complainant could not afford the fee. Therefore, the licensee did not fulfill the request.

The major licensee met with the complainant in its offices three times during the review and comment period. Maps were available for review at those meetings. Two reviews were at the major licensee's office, about 40 minutes driving distance from the complainant's home, and the other was at another one of the licensee's offices in the complainant's town. As well, at the end of the review and comment period, the major licensee gave the complainant electronic information, including copies of tables in PDF format. However, that format was unacceptable to the complainant. He wanted to present his comments within the licensee's document, rather than retyping the information, and PDF files did not allow such action.

Another reason that the complainant wanted electronic data files from the licensee was to do a GIS analysis to monitor licensee development plans.To do this the complainant required electronic files of the maps. The licensee gave him the electronic files but he could not analyze or view them on his computer. If he wanted to view the maps, he needed to pay to print them and could not afford the cost. For another large amendment for salvage, the

major licensee put a copy of the amendment in the local library in the complainant's town. However, the complainant could not sign the documents out of the library; they had to be viewed there.

Relevant Legislation

The Forest Practices Code of British Columbia Act (the Code) was in effect at the time of the complaint. Section 39 of the Code and section 27 of the *Operational and Site Planning Regulation* (OPR) required the licensee to make an amendment available for review and comment at the licensee's place of business and to submit a copy to MOF at the beginning of the review and comment period.

Under section 7 of the OPR, the district manager could notify licensees to refer the amendment to materially affected persons. Although the legislation does not define what "refer" means, the district manager could specify what needed to be in the referral. These provisions remain in effect under the *Forest and Range Practices Act* (FRPA) until forest stewardship plans replace forest development plans. Under section 27(8) of OPR the licensee must provide an opportunity that "is commensurate with the nature and extent of that person's interest in the area under the plan and any right that person may have to use the area under the plan."

The Board has no jurisdiction to investigate the freedom of information request.

Discussion

Were the district managers' decisions appropriate?

The Board often reviews discretionary decisions[3]. Ultimately, whether or not to send a notice to a licensee requiring it to refer an amendment is a discretionary decision. When the Board looks at discretionary decisions, it decides whether the decision falls within a range of reasonable alternatives. If so, the Board accepts the decision as valid.

In this case, the legislation gave district managers the discretion to require licensees to refer an amendment to a person only if the FDP might have a material effect on the person's interest in the area. In other words, the district managers could only require that a licensee send a referral to a person if the person had a material interest in the area of the FDP. The Arrow Boundary Forest District determined that the complainant had a material interest in the area of the FDP. As a courtesy, but without making such a determination, the Okanagan Shuswap Forest District requested licensees to refer plan amendments to the complainant. Clearly, both districts treated the complainant as having such an interest. The Board appreciates why the complainant thought he should get a full copy of the FDP. That is what the MOF website said he should get. However, the MOF developed the website information to answer questions raised in training sessions about 1998 changes to the Code.

Although sending a copy of the plan was the answer at the time, it is now the Forest Practices Branch's view that the question of what constitutes a referral is a discretionary decision of a district manager, not a decision of the Forest Practices Branch or the ministry generally. The Board agrees with that interpretation.

The website, however, is still accessible and misleading. The public reasonably expects the MOF website to be accurate, so the Board suggests that the Forest Practices Branch correct the error as soon as it can. The districts were not even aware of this website reference until the complainant informed them about it. Both district managers had developed their own local policies regarding the referral of an FDP amendment. Both districts determined that the complainant's interest warranted the complainant receiving more consideration than the general reviewing public. In both cases, their policies required that licensees send a notice explaining when and where the complainant could view the plan.

In 2000, the Board reviewed the forest development planning process in the province and found that 17 of 18 districts sampled had a practice of requiring licensees to send a similar type of notification. Such a notice is a significant improvement over the general public notification, which consists of a notice in a newspaper that a reader can easily overlook. As a result of the notice, the complainant did not have to search each issue of several newspapers in order to discover that there was new forest development planned in the area of interest to him. The complainant, however, argues that a mere referral letter is insufficient because his financial and physical conditions prevent him from reviewing the amendments at the licensees' offices.

The legislation enabled district managers to require licensees to refer an FDP to a person with a material interest. The district managers did so. As well, district manager's have the discretion to decide what should be in a referral. Even though the Forest Practices Branch originally advised trainees that referring a plan should mean sending the whole plan, that was training advice, not policy. There are likely to be many parties and people with interests that are similar to those of the complainant. Given the high reproduction cost of an FDP and its electronic mapping, it would be unreasonable for the government to expect licensees to bear the cost that would result.

The decisions were the district manager's to make; the Board finds that they both made local policies that described the type of interest and specified what type of referral a licensee should send. It is the Board's view that the decisions to have licensees send a referral letter to alert materially-affected persons, and not the entire FDP amendment, were appropriate, even in the complainant's case.

Did the licensees provide an adequate opportunity to review the amendment?

Licensees have a responsibility to provide an opportunity for review and comment on amendments. The legislation requires that a licensee make the amendment available for review for the entire review period at the licensee's office. Under the Code, the opportunity

must also be, in the district manager's opinion, commensurate with the nature and extent of each reviewer's interest in the area. Licensees must provide that standard of opportunity to all people interested in viewing the plan, not just materially affected parties. As shown above, if the district manager considers that a party also has a material interest in the area of a plan, the district manager can require the licensee to refer the FDP to the party. Local policy letters developed by the districts indicated that a notification letter was normally adequate for referral purposes.

In a similar complaint investigated by the Board (report FPB/IRC/53), a different complainant had a comparable interest. He was a university professor who studied grizzly bears. He also wanted the licensee to send him a full copy of the FDP. The licensee offered the plan to the professor at cost. In that complaint, the Board concluded that the offer to provide the plan at cost went beyond the legislated requirements.

For this complaint, the licensees were required to notify the complainant and make the plans available for review at the licensees' offices. Licensees did so and the complainant used those opportunities. The Code provides people who review amendments the right to make comments within the review and comment period and it requires licensees to consider such comments. That also happened in the circumstances of this complaint. In this case, it appears that the complainant not only wanted to comment on, but wanted to monitor, the licensees' forest development plans.

The Ministry of Forests has the primary responsibility to monitor licensee's forest development plans. Other interested parties also have a right to monitor such plans, but the legislation stops short of requiring that a licensee give interested parties its data. To comply with the legislation, a licensee must only make the plan available at its place of business throughout the review and comment period.

In this case, all licensees exceeded the minimum requirement of sending out the referral letter by giving the complainant an opportunity to review the amendments at the closest office. The licensees tailored the reviews to the circumstances. Some of the amendments were small in scale and the licensees' offices were far from the complainant's home. In these cases the licensees sent all of the information to the complainant, and did so free of charge. For the larger amendments proposed by one licensee, the complainant was able to view the plans at the licensee's offices and the licensee offered to produce a set of maps, although at cost, for the complainant. Although the complainant thought what licensees were offering was inconsistent, all licensees interviewed agreed that what they will give out free of charge depends on the scale of the request.

In summary, besides making the amendments available at their offices, the licensees either gave the complainant copies of small amendments, offered to make copies of large amendments at cost, or gave electronic copies of the FDPs to the complainant. The one major licensee of most concern to the complainant also met with the complainant in its

offices when requested. For another amendment, that major licensee put a copy of a large amendment in the local library a few blocks from the complainant's home. The Board considers that the licensees all provided adequate opportunities for the complainant to review the amendments; opportunities that were commensurate with the nature and extent of the complainant's interest in the area.

Conclusions

The reference to referrals of FDPs to materially affected parties on the Ministry of Forests website led the complaint to believe that he should get a full copy of FDP amendments. Nevertheless, the district managers' decisions requiring that licensees send out only referral letters to the complainant were reasonable. The licensees did that, and more, to facilitate the complainant's review of amendments. The licensees gave the complainant adequate opportunities to review the FDP amendment

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[1] Please refer to "Streamlining the Code; Operational Plan Referrals; Questions and Answers" [online]http://www.for.gov.bc.ca/hfd/training/Q-and-A/QA-09.htm.

[2] Forest Practices Board. 2001. Public Request of Forestry Plan. Complain Investigation FPB/IRC/53 http://www.fpb.gov.bc.ca/complaints/irc53/IRC53s.htm

[3] The Board policy on discretionary decisions can be found at [online] http://www.fpb.gov.bc.ca/BOARD/Policies/discretionary.htm.